

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

THOMAS M. JONES, JR., et al.,

Plaintiffs,

vs.

Civil Action 2:06-CV-80

NATIONAL CITY BANK,

Defendant.

OPINION AND ORDER

This action was originally filed by Thomas and Thelma Jones under the Electronic Funds Transfer Act, 15 U.S.C. §1693 et seq., in connection with allegedly unauthorized withdrawals by their son from plaintiffs' accounts with the defendant bank. The plaintiffs also asserted a state law claim of negligence. Thereafter, the defendant bank was granted leave to file a third party complaint against Thomas Jones, III, plaintiffs' son, seeking contribution from the third party defendant for any and all liability, including litigation costs and attorney's fees, incurred by the defendant/third party plaintiff in this action. *Third Party Complaint*, ¶¶4-7, Doc. No. 14. The third party plaintiff also asserted a fraud claim. *Id.*, ¶¶8-11. Service of process was completed on the third party defendant on February 3, 2007. Doc. No. 18. However, no appearance has ever been made by or on behalf of the third party defendant. Plaintiffs' claims against the defendant bank were thereafter resolved and dismissed with prejudice. *Stipulated Notice of Dismissal*, Doc. No. 20.

On May 14, 2007, the Clerk entered the fact of the third party defendant's default. Doc. No. 24. This matter is now before the Court

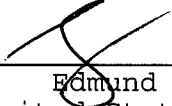
on the third party plaintiff's motion for default judgment on the third party complaint. Doc. No. 28.

The motion for default judgment is supported by the *Affidavit of Christopher C. Cohagen*, Doc. No. 30, filed under seal because it refers to the underlying settlement agreement between plaintiffs and the defendant bank, the terms of which are to be maintained in confidence. Exhibit A, attached to *Affidavit of Christopher C. Cohagen*. Terms of settlement include a cash payment as well as assignment to the defendant bank of the unpaid restitution ordered in the underlying criminal case, in which the third party defendant was convicted. The total of both amounts equals \$23,082.89, which the third party plaintiff now seeks by way of judgment.

The motion for default judgment on the third party complaint, Doc. No. 28, is **GRANTED**. Third party plaintiff National City Bank is **AWARDED JUDGMENT BY DEFAULT** against third party defendant Thomas M. Jones, III, in the amount of \$23,082.89.

The Clerk shall enter **FINAL JUDGMENT** accordingly.

6-21-2007
Date



Edmund A. Sargus, Jr.
United States District Judge